

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**GARY MACNEILAGE and
VALERIE MACNEILAGE,**

Plaintiffs,

**RISK MANAGEMENT DIVISION OF
THE STATE OF NEW MEXICO,**

Plaintiff in Intervention,

v.

No. CIV. 07-841 RHS/WDS

AVILL YOUNG, et al.,

Defendants.

**ORDER DECLINING TO ADOPT
REPORT AND RECOMMENDATION
AND
DENYING MOTION TO APPROVE SETTLEMENT**

THIS MATTER comes before the Court on the Report and Recommendation [docket no. 212] filed April 30, 2009 by the Referred Magistrate Judge. Apparently, Defendant Avill Young has certain insurance coverage related to a homeowner's insurance policy and it is the desire of the parties to obtain approval of a settlement reached by and between Plaintiffs and the non-party insurer. A hearing was held on April 27, 2009, by the Referred Magistrate Judge and as a result of that hearing the instant Report and Recommendation has been filed.

The Referred Magistrate Judge found that the proposed settlement was negotiated fairly and honestly and this Court has no reason to question that finding. The fundamental problems with approval and acceptance of the proposed settlement are as follows:

1. This Court does not have jurisdiction over the homeowner policy insurer and therefore lacks the ability to either approve or question the proposed settlement as it may concern the insurer.

2. The parties seems to have been unable to draft and execute a proper form of release.

It appears to this Court that the parties are attempting to settle with a non-party and still reserve all causes of action pending herein by Plaintiffs against Defendant Young. This seems inconsistent with the insurer's arguable obligation to obtain a dismissal of Defendant Young from the lawsuit in exchange for the proposed sums being made under the terms of the settlement.

3. The Court cannot determine what exact benefit the minor children receive as a result of the settlement other than the payment of the money. It is unclear what the children are giving up in exchange for the payment of money by the non-party.

4. As counsel and the parties are unable to produce releases for this Court to examine, the settlement and approval thereof are premature.

IT IS THEREFORE ORDERED that the Motion to Approve Settlement of Minors' Claims [docket no. 208] is hereby denied.

IT IS FURTHER ORDERED that the Court respectfully declines to approve the Report and Recommendation [docket no. 212].

Robert Hayes Scott
ROBERT HAYES SCOTT
UNITED STATES MAGISTRATE JUDGE